

**MINUTES
REGULAR MEETING
RETIREMENT BOARD OF TRUSTEES
EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BATON ROUGE
AND PARISH OF EAST BATON ROUGE
MAY 27, 2021**

The regular meeting of the Retirement Board of Trustees was held in the Metropolitan Council Chambers at 222 St. Louis Street, and was called to order at 10:08 a.m. by Board Chairman Ms. Marsha Hanlon. Members present: Mr. J. Daniels, Mr. Brian Bernard, Mr. David West, and Chief Britt Hines. Absent: Mr. Mark LeBlanc. Staff present: Mr. Jeffrey Yates, Mr. Russell Smith, Mr. Mark Williams, and Mr. Kyle Drago. Others present: Ms. Denise Akers – legal counsel, Ms. Shelley Johnson and Mr. Pat McDonald – Foster & Foster Actuaries, Mr. Joe Toups – Council Budget Office, Ms. Angie Savoy and Ms. Linda Hunt – Finance Administration.

Mr. Drago formally called the roll.

The chairman began by introducing Item 1, Reading and Approval of Minutes, and noted that there were minutes being considered for approval from the regular meeting of April 29, 2021 and from the Investment Committee meeting of May 7, 2021, and called for a motion.

Motion by Mr. Daniels, seconded by Mr. West to suspend the reading of, and approve the minutes of the regular meeting of April 29, 2021 and of the Investment Committee meeting of May 7, 2021 as presented.

No discussion and no objections.

Motion passed by those members present.

The next item on the agenda was Item 3, Benefits Report, and the chairman called on Mr. Yates to present the report. Mr. Yates stated that there was nothing unusual on the report but pointed out two transfers of service that were substantial in dollar amount. He stated that the report was in order as presented.

Motion by Mr. West, seconded by Mr. Bernard to approve the Benefits Report as presented.

No discussion and no objections.

Motion passed by those members present.

The next item on the agenda was Item 4, DROP Notifications Report, and it was noted that this report was provided for informational purposes only, and no action was necessary.

Noting that the actuaries were in attendance to present the annual actuarial valuations, the chairman skipped to Item 9A, Presentation of January 1, 2021 CPERS Actuarial Valuation, and recognized Ms. Shelley Johnson and Mr. Pat McDonald for their presentation. Ms. Johnson began by noting the calculation of the employer contribution rate as a percentage of payroll, which calculated to be 36.5% (for calendar year 2022), increasing from last year's calculated rate of 36.0%. The increase was due primarily to the amortization of liability and the deferral of recognized investment gains to future years. She then discussed the principal valuation results showing actuarial and market value of assets, participant data, and liability data by employee classification. The funded ratio increased from 65.3% to 65.6% and normal cost remained level. She discussed the elements of pension cost and the assumptions they used to derive the required plan sponsor contributions. She then reviewed the actuarial gains and losses such as investment return, salary increases, mortality, active decrements, etc. and how each one affected the unfunded actuarial accrued liability (UAAL). Ms. Johnson then moved to the discussion of risks, and specifically payroll risk, as the payroll assumption falls above or below the actual experience. She discussed the ratio of active to inactive members and how risk is affected as the plan matures. This also results in the plan having less time to compensate for actuarial losses since the membership generally has fewer years until retirement. She then showed a 10-year projection, which assumes the System meets the actuarial assumptions. She also showed a breakdown of how the actuarial value of assets was determined, and noted that there were substantial gains on investments that still had yet to be recognized. In answer to a question from Mr. West, Ms. Johnson stated that a significant part of what makes the 10-year CPERS projection look positive is the increased investment earnings in recent years, along with the revamping of benefits back in 2015. In answer to a question from Mr. Bernard, Ms. Johnson stated that in order to achieve 100% funding, the UAAL would have to be completely paid off, which does not fit with the board approved method of decreasing the amortization each year until the 15th year, and thereafter holding the UAAL amortization at 15 years.

Motion by Mr. Bernard, seconded by Mr. Daniels to adopt the employer contribution rate of 36.5% for calendar year 2022 as recommended by the actuarial consultant.

No discussion and no objections.

Motion passed by those members present.

Next, the chairman introduced Item 11.E.1 out of order, Presentation of January 1, 2021 PGT Actuarial Valuation, and recognized Mr. Pat McDonald for his comments. He began by pointing out some comments in this year's and last year's report regarding the deficiencies in PGT contributions versus the recommended contributions. He noted that the employer required contribution had decreased by about \$490,000 due to actuarial gains and decreases in normal costs. He also noted that as the PGT payroll decreases, the volatility of the rate as a percentage of payroll will increase. The normal costs decreased, as did the payment required to amortize the UAAL. Although the actual employer contribution was well below the recommended contribution, the 2020 contribution had increased substantially from prior years. Mr. McDonald stated that the active participants in the PGT decreased by 20 members or 22% of actives, and that although retired members had held fairly steady, the number of DROP-only retirees had continued to increase. Both the actuarial value of assets and the market value of assets increased over last year. He noted that the DROP balances had increased over 6% and were now over twice the amount of the assets, which means that the PGT has negative assets. The UAAL decreased by over 4%, or about \$500,000 which is a sign of progress on the funding side. He again spoke about the contribution risk and what that means in terms of not being able to pay the required benefits. He then gave some projections for number of active members out to 7 years in the future, and stated that percentage of pay is not a practical way to look at contribution requirements for the PGT. Mr. McDonald noted that they had revised the 10-year projection to reflect a greater contribution from the plan sponsor with scheduled increases each year. He then reviewed deferred investment gains and losses for the next 5 years. He reminded the Board that the PGT assumes a 4-year amortization period because of the high risk for DROP withdrawals depleting the fund, which in turn elevates the annual required contribution. Ms. Savoy stated that Finance had met the required employer contribution, but the charts show timing differences from the budgeted years to the actual calculation years.

Motion by Mr. West, seconded by Mr. Bernard to receive the PGT actuarial report as presented.

No discussion and no objections.

Motion passed by those members present.

The chairman then moved back to Item 5, Consultants' Reports, and under Item 5A, Status on Pending Legal Matters, recognized Ms. Akers for her legal update report. She noted that each Board member had a summary of the securities litigations that were in various stages of litigation. She noted that nothing on the report should require an executive session. She stated that there was no change in the MacroGenics suit, with all parties waiting on the ruling for the motion to dismiss. In the GreenSky litigation she noted that the Board's action from last meeting appeared to be progressing, and that a settlement amount had been agreed upon. The attorney fees in the retainer agreement were 25 percent of the settlement fund plus up to \$250,000 in expenses. Ms. Akers requested Board agreement with the terms of the retainer.

Motion by Mr. Daniels, seconded by Mr. West to approve the terms of the attorney fees in the GreenSky litigation settlement.

No discussion and no objections.

Motion passed by those members present.

Regarding the Impinj lawsuit, we are waiting for the final settlement proceeds to be distributed according to the direction of the court, which should be done later this year. On the Energy Transfer case, the judge has denied the defendant's motion to dismiss. The Merrit Medical suit also had a motion to dismiss, for which the judge has ruled against, which in turn will allow the discovery process to begin. Following the report, there were no questions from the Board members.

Ms. Akers then reported on her findings regarding the duplication of processes for the disability retirement procedures as requested by Mr. Bernard. She stated that the ordinances require that the Board get a medical opinion from the Board's medical consultant/physician. Part of the procedure is for the member to get a certification from his/her own physician that the member is totally and permanently disabled from performance of their normal duties. Then the employer goes through the City Ordinance 1:470 to determine whether or not there is another job that might be offered to the member. This requires a physician review and possible examination. CPERS and the employer have different responsibilities and standards for meeting their requirements of CPERS ordinances and City Ordinance 1:470. Ms. Akers noted that technically the City and the Retirement Board could use the same physician, but that the standards for determination of disability would vary from the City to CPERS (e.g. analyzing all City-Parish job positions versus only the current job position).

Ms. Akers then stated that her law firm was asking for an increase in rates, which had not been raised for a two-year period. She requested that the \$230 per hour rate be increased to \$240 per hour in accordance with the CPI-U, and which, if approved, would begin January 1, 2022.

Motion by Mr. West, seconded by Chief Hines to approve the Akers & Wisbar billing rate of \$240 per hour beginning January 1, 2022.

No discussion and no objections.

Motion passed by those members present.

The next item was Item 6, Committee Reports, and under Item 6B, Investment Committee Reports, the chairman recognized Mr. West for his report. Mr. West stated that a meeting of the Investment Committee took place May 7, 2021, at which AndCo presented the second quarter investment report results. The report showed a return for the quarter of 3.08% versus the benchmark return of 1.86%. He noted that two investment managers (Segall Bryant Hamill and Magnitude) were on watch for various reasons, and that the committee would be watching closely to see if performance issues would improve. Regarding the PGT, the gross performance was 1.44%, compared to the benchmark of 1.13%. He reminded the Board of the changes made last year with the PGT asset allocation, which were done for liquidity and fee-reduction purposes. Mr. West stated he was pleased that AndCo had included seven viable candidates for consideration for a replacement firm in the emerging market equity space. No action was necessary stemming from the committee meeting.

Moving to Item 7, Staff Reports, the chairman noted that under Item 7C, there were invoices from the law offices of Akers & Wisbar, LLC, and called for a motion.

Motion by Mr. Bernard, seconded by Ms. Hanlon to approve payment for the charges to the law firm of Akers & Wisbar, LLC as presented.

No discussion and no objections.

Motion passed by those members present.

Under Item 7D, there was an invoice from the law offices of Tarcza and Associates, LLC, and the chairman called for a motion.

Motion by Mr. West, seconded by Mr. Daniels to approve payment for the charges to the law firm of Tarcza and Associates, LLC as presented.

No discussion and no objections.

Motion passed by those members present.

Under 7F, there were a number of investment manager/consultant invoices for the Board's review.

Under 7G, Cash Activity Report, Mr. Drago presented the budget comparison report, and the unaudited financial statements which he believes are the final version.

The chairman noted that Foster & Foster had provided the GASB 67 and 68 report for the Board's information, but that they did not normally present the report.

The chairman then moved to Item 8A, Discussion of Opinion Letter and Follow-Up Letter from Tax Counsel Tarcza and Associates. The chairman stated that she had met with CPERS staff to discuss a redline draft of possible revisions to the Retirement Ordinances, however a number of question came up which will need answers from the System's tax counsel. Ms. Akers distributed copies of the redline and highlighted version to all Board members. Regarding the retiree return to work provision, the chairman stated that the document would allow continuation of employment for 58 hours a pay period, but would add language that there can be no expectation of continued employment after retirement. The language also requires a separation period of at least 30 days, but tax counsel would need to opine on that issue. She stated that there may be a problem with emergency appointments exceeding the 5-month part-time rule, since 2 emergency appointments of 90 days each would total about 6 months. In answer to a question from Mr. Daniels, the chairman stated that the definition of a full-time member was tied to working 30 hours or more per week, and that if the retiree did not meet the definition of employee (29 hours or less per week), he or she could return to work and continue receiving the retirement benefit. Mr. Daniels noted that an employee list of part-time return-to-work members has been distributed and asked about the timeline for addressing that issue, which was originally set for July. The chairman responded that further clarification was needed from tax counsel, and that it would be difficult to meet a July deadline, but there was still an expectation of meeting a January 1st implementation. Ms. Akers stated that Board approval was needed before a draft of the changes would be sent to tax counsel and to the actuary. Mr. Daniels stated that he understood that approximately 60 employees could be impacted from the original list, and that he wanted to discuss the separation period. He also noted that the cooling off period in the state retirement systems is normally 24 months, but that the current document only imposes a separation of 30 days. The chairman responded that a meeting with the Mayor was held with the idea of making as few changes as possible to get the item passed. This would include employees of the Mayor's Office and the Metro Council, and would be the least onerous way of implementing the changes to comply with qualification rules. Employees who had attained the age of 59 ½ would have very similar rules as currently exist. Mr. Daniels noted that he would like to see a separation period more in sync with other retirement systems, and that he had recently seen a case of a retiree not able to contract with the City-Parish because of the 2 year requirement. The chairman noted that in the case of contracts there was a 2 year waiting period, but not so with employees. Mr. Daniels stated that whether contract or employee, the member would be compensated for doing business with the City. Ms. Akers noted that the state ethics rules are designed to prevent former employees from exercising any advantage in contracting with the former employer. Mr. West stated that having recently heard from an Ethics Commission employee, he was not able to give a hard opinion on the application of the 24 month separation period, although he acknowledged a difference between contractors and employees. The chairman stated that she knew of no other public employee retirement systems that set

a separation period of 2 years. Mr. West asked if the board should have tax counsel Bob Tarcza in attendance at the Board meetings to speed the process along. The chairman stated that verbal discussions may differ from final written opinions, and the Board needed something they can be certain of. Mr. Bernard asked Ms. Akers how the latest policy draft lines up with other Louisiana PERS, and noted that the CPERS rules seem extreme in comparison to other systems regarding ages and separation periods. Ms. Akers stated that some other plans cap the amount of time the return to work retiree can serve, but that she was not certain how other provisions compared. The chairman noted that the limitations to retirees who have not attained normal retirement age were much more stringent than for those who had; particularly the 25 percent of pay, or 50 percent of the pension amount adjusted for inflation. It was noted that Tarcza's letter seemed to allow even full-time employment for a retiree who had reached normal retirement age. The chairman stated that she would present anything the Board accepted to the Mayor and Council, with the hope that it would result in the least impact to the employers. Mr. Daniels stated that he supported continuity of City-Parish services, but that personnel could be properly trained and promoted to allow for continuity of services also, and that a succession plan would help insure that someone would be prepared to step into a job position when needed. He noted the issue of how attractive is the City-Parish to potential employees, given the possibility of a situation in which a younger or middle-management employee aspires to move up in the ranks but is blocked by a management retiree returning to work to occupy a position. He stated that this situation can cause a loss of talent in the organization, and that it should be considered as a management tool for attracting and retaining talent. Ms. Akers stated that Board members wear two hats; one as an employee or management, and the other as a fiduciary of the plan. She stated that it was important to maintain the qualification standards for the System, while others can advocate what is best for the employer and job positions. She noted that the general idea was to take what the Metro Council currently allows and to minimally change it to meet IRS requirements without getting into the politics of the management side. Mr. Daniels stated that the employees and employers are part of the Retirement System, that it was all related, and that the Board had an opportunity to address some of the gaps that are part of the system. The chairman pointed out that the employers can choose to not participate in the retiree return to work program at all, and that minimum changes were being targeted which would comply with the IRS requirements for qualification. In answer to a question from Mr. Daniels, the chairman stated that the changes being considered were applicable to the main employer (City-Parish) which represented over 80% of the membership. She agreed that the views of other employers would be considered, but that her immediate goal was to get CPERS in compliance with the IRS. Ms. Akers stated that she did not think it appropriate for CPERS to force employer management decisions. The chairman noted that given the possibility of the return to work policy having a negative impact on the actuarial funding of the system, a clause was added requiring the employer to pay employer retirement contributions on the salaries of the return to work retirees. The chairman then outlined the restrictions for the returning retirees in section 2, with much lower limits to earnings, and with mandatory employer contributions. She also discussed the provisions that allow a member who was age 55 in the year of retirement to draw from DROP without limitation, and the member who violates the DROP contract to be forced to take a total distribution from DROP. Another issue was the required minimum distributions (RMD) paid to members who retired before the age of 55 (50 in the case of public safety). She reiterated that there were several questions that must be answered by tax counsel that arose from framing the revised ordinance language. Mr. Williams had several questions regarding the proposed language, such as whether or not there should be a limit to the time a retiree can return to work, and whether the separation period for a classified member was different than that of an unclassified member. Mr. Bernard asked about how long the current document had been in circulation, and stated that to represent that the changes are not driven by who can return to work would be disingenuous and insulting. He stated that this language was being driven by who can return, their age, the effective date of the changes, and the importance of their positions. He further stated that the true purpose of the document should be disclosed, and if the purpose is to comply with the IRS, he wanted to know the specifics of how long the separation period should be, what is the age requirement, and how much can you earn. The chairman stated that her priority was to keep the plan qualified, and that some members would not be able to be accommodated as a result. She noted that the Mayor and Council could eliminate the return to work policy if they chose, and that there was nothing in the language that would require any employer to participate and be affected from an HR standpoint. Ms. Akers again explained why the language needed to be sent back to Tarcza after the Board approves it. There were no recommended changes for retirees returning to complete their DROP, provided they did not withdraw any DROP funds not based on life expectancy. The current policy forces a DROP contract violator to take a full distribution and to forfeit all interest, whereas the new language would still require forfeiture of interest but not permit a distribution until the member turns 59 ½. The effective date would be January 1, 2022. Chief Hines asked whether or not the discussion was now public record, and asked if the matter could be discussed outside the chambers. Mr. West reiterated that point, and as an employee representative he wanted to know if this matter and the associated documents were public record for discussion. He noted that he did not take the same position as the attorney regarding a complete separation of the trustee duties and the considerations of management. Ms. Akers explained her position, which was in line with what other pension attorneys advise. Mr. West also brought up the subject of personal liability for trustees, and asked what his responsibility was to his constituents. He also wanted to know if other employee groups would be invited to the table to give opinions on the language. Ms. Akers stated that she would circulate the latest language to Bob Tarcza and request answers to the additional questions that had come up. If responses were received in time, those answers could be circulated to the Board members prior to the next meeting. Mr. Daniels recommended that section one be amended to limit the working hours to 25 percent of pay rather than 1,508 hours per year. The chairman stated that the Tarcza letter did not seem to limit the hours for employees who are normal retirement age, and that the sentiment of the Mayor was to not change the current rule unnecessarily. Mr. Daniels also wanted the separation period of 12 months to be a point of discussion across the board. He also wanted to see a cap of 18 months for the return to work period. Again the chairman stated her only concern was for the qualification of the system, and that she preferred that the Board not step into the area of the employer since the employer can control all the employment factors currently.

Motion by Mr. Daniels to send to the tax consultant the proposed language with the amendments added by Mr. Daniels. The motion died for a lack of a second.

Discussion continued with Ms. Linda Hunt stating that the City had in place a return to work policy adopted by the Metro Council about 15 years ago, and that she did not understand why when the Board was seeking the minimum requirements for qualification of the plan, questions would be asked to make the policy more restrictive on employers including BREC. She stated that she respected the concerns about succession plans and employee morale. Mr. Bernard stated that a request for an actuary study brought these issues to the forefront, and that he perhaps needed to concentrate on his fiduciary role. In answer to a question from Mr. Bernard, the original return to work policy was discussed, and then the amended policy which is the current policy, both of which were passed by the Metro Council. It was noted that the policies were adopted in response to member requests.

Motion by Ms. Hanlon, to forward the document and further questions to Bob Tarcza for him to opine as to the minimum requirements to maintain qualified status for the system. Motion died for a lack of a second.

Motion by Mr. West to defer this item until the next regular meeting in order to have an additional Board member present who was very involved in this issue. Motion died for a lack of a second.

Motion by Ms. Hanlon, seconded by Mr. Daniels to forward the document and further questions to Bob Tarcza for him to opine as to the minimum requirements to maintain qualified status for the system for discussion at the next Board meeting.

No discussion and no objections.

Motion passed by those members present.

The next item on the agenda was Item 8B, Discussion of Retirement Ordinance Language Amendment Regarding Age Penalty, and Mr. Yates stated that if ordinance amendments are made in the future, there was some language cleanup that needed to be done to correct the calculation of an age penalty for some members.

Motion by Ms. Hanlon, seconded by Mr. West to defer Item 8B to the next regular meeting.

No discussion and no objections.

Motion passed by those members present.

The chairman then introduced Item 9C, Appointing Election Committee for Police Representative to Retirement Board and noted that this position was previously held by Deputy Chief Neal Noel. Mr. Smith stated that there were about 140 voting members but a smaller population that is eligible to run for the office. The chairman stated that she would serve on the committee as well as Chief Hines and Mr. Bernard.

Under Item 10, Administrative Matters, there were no items to address.

The chairman then continued with Item 11, Police Guarantee Trust Matters, and under Item 11A, PGT Benefits Report, recognized Mr. Yates who stated that the report contained three items which were in order as presented. He noted that all 3 members would likely have a guaranteed payment due upon DROP exit.

Motion by Mr. Bernard, seconded by Mr. Daniels to approve the PGT Benefits Report as presented.

No discussion and no objections.

Motion passed by those members present.

Under Item 11B, the chairman noted that the PGT DROP Notifications Report was provided for the Board's information, and that no action was required.

Under Item 11C, Consultants' Reports, there were no items to address.

There were a number of investment manager invoices under Item 11D.1 for the Board's review.

Under Item 11D.2 there were no invoices to address.

Under Item 11D.3, PGT Cash Activity Report, Mr. Drago presented the budget comparison report and the unaudited financial statements.

Under Item 11E.1, there were no matters for consideration.

Under Items 11F Unfinished Business, and 11G, there were no matters to address.

Seeing no further items on the agenda, the chairman called for a motion to adjourn.

Motion by Mr. Daniels, seconded by Mr. West to adjourn at 12:48 p.m.

No discussion and no objections.

Motion passed by those members present.

MARSHA HANLON
CHAIRMAN, RETIREMENT BOARD OF TRUSTEES

JEFFREY R. YATES
RETIREMENT ADMINISTRATOR